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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 37th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 14 July 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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The meeting was called to order at 3.10 p.m.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF ITALY

1. **Mr. DINI** (Minister for Foreign Affairs of Italy) said that not since the adoption of the United Nations Charter in San Francisco had the United Nations set itself such an ambitious goal as the drafting of the Statute for the International Criminal Court. He was sure that all present were conscious of their own personal responsibility to history and to the world. None could fail to sense that what was at stake was the legitimacy of the United Nations itself as a body capable of establishing rules and principles that were consonant with the times. All must be aware of their responsibility to future generations. He trusted that the United Nations Secretary-General would participate personally in the concluding phase of the Conference, given his personal standing and the contribution he could make to ensuring a successful conclusion.

2. Difficulties had understandably emerged. The aim was to consolidate an international community underpinned by the primacy of the individual. The institution of the Court would prevent national sovereignty from being used as a convenient shield behind which violence and outrage were committed. Human rights would henceforth be protected by an international jurisdiction superimposed on national jurisdiction. The vital balance to be struck between national prerogatives and international demands could not be at the expense of the independence, authority and effectiveness of the institution that was about to be brought into existence.

3. There was manifest public concern that the Conference should bring its work to fruition. Intense emotions had been generated by recent conflicts which ignored the traditional rules of war and were revealing undreamed- of reserves of ferocity and brutality.

4. Crucial decisions were about to be taken. In the negotiations, Italy had aimed high from the start, taking into account the expectations of the public, but had also borne in mind the need to seek acceptable compromises on the various issues involved.

5. The Statute of the new Court was to be signed in Rome on 18 July by the representatives of all participating countries. The opportunity to make a fundamental stride forward in the history of the United Nations must not be allowed to slip away.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1, L.11/Add.3 and Corr.1, L.15 and Corr.1)

Part 9 of the draft Statute (*continued*)

6. **Mr. MOCHOCHOKO** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, introduced the Group's reports in documents A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1 and L.11/Add.3 and Corr.1. Document A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1 contained a number of proposed provisions for the consideration of the Committee. In connection with additional paragraph 2 for article 90 *quater*, he pointed out that article 90 *quater* itself had been forwarded to the Committee of the Whole in the Group's previous report and was to be found in document A/CONF.183/C.1/WGIC/L.15/Corr.1.

7. Regarding document A/CONF.183/C.1/WGIC/L.11/Add.3, the attention of the Committee of the Whole was drawn in particular to paragraph 2, indicating amendments proposed to provisions previously transmitted to the Committee.

8. He commended the provisions contained in the reports to the Committee of the Whole with the recommendation that they should be forwarded to the Drafting Committee.

9. **Mr. AL AWADI** (United Arab Emirates), supported by **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain), said that paragraph 4 of article 91 as it appeared in document A/CONF.183/C.1/WGIC/L.11/Add.3 would give the Prosecutor the right to take certain measures without the approval of the State concerned, which was incompatible with the principle of complementarity. The Prosecutor should have the agreement of the State party which he or she wished to visit. The paragraph should be redrafted in order to take into account the right of the State party concerned to approve the Prosecutor's opening an investigation or travelling to its territory.

10. **Mr. MOCHOCHOKO** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, said that the proposed text represented a balanced compromise between competing views on the issue. It had been realized that the Prosecutor could not travel to any State without that State's consent, but it would have made the provision too cumbersome to spell out all the mechanisms that could be used in such circumstances.

11. **Mr. MADANI** (Saudi Arabia) expressed his delegation's reservations in respect of article 91 as it stood.

12. **Mr. RAMA RAO** (India), referring to paragraph 2 of document A/CONF.183/C.1/WGIC/L.11/Add.2/Corr.1, said he wished to reiterate his delegation's position that the phrase which had been placed in square brackets should be deleted.

13. **Mr. AL-BAKER** (Qatar) fully endorsed the views expressed by the representatives of the United Arab Emirates, Bahrain and Saudi Arabia.

14. **The CHAIRMAN** suggested that article 91 should be considered further by the Working Group. The remaining provisions could be submitted to the Drafting Committee.

15. *It was so decided.*

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.49/Rev.1/Add.1)

16. **Mr. RAMA RAO** (India), speaking as Coordinator, introduced document A/CONF.183/C.1/L.49/Rev.1/Add.1. It contained recommendations, based on informal consultations, concerning two subparagraphs of paragraph 4 of the draft resolution on the establishment of the proposed Preparatory Commission, to be annexed to the Final Act. For subparagraph (a), agreement had been reached on a text on the understanding that there would be a footnote to take into account the views of certain delegations. With regard to subparagraph (f), it had been agreed that the brackets could be removed. The Committee of the Whole might wish to refer the two subparagraphs to the Drafting Committee.

17. *It was so decided.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.64-L.68; A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1)

Report of the Drafting Committee

18. **The CHAIRMAN** invited the Chairman of the Drafting Committee to introduce that Committee's report on Parts 1, 3, 4, 9 and 11 of the draft Statute (A/CONF.183/C.1/L.64-L.68).

19. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, said that the Committee consisted of 25 delegations representing all the geographic areas and various legal systems of the world. Under the established rules, it did not deal with matters of substance but was responsible for ensuring that the text as a whole was a homogeneous and cohesive one which avoided ambiguities and matters which were not clear. A great deal of time had been spent ensuring consistency of expression and clarity throughout the text.

20. **The CHAIRMAN** thanked the Chairman of the Drafting Committee and its members for their efforts.

21. **Mr. GÜNEY** (Turkey) said that the proposed text for article 22 raised a substantive issue. The proposed draft did not reflect the agreement reached during the discussions that had taken place on the proposal to combine the original articles 8 and 22. In that connection, he drew attention to what he had said at the 30th meeting of the Committee of the Whole.

22. **Mr. YAÑEZ-BARNUEVO** (Spain), supported by **Mr. HAMDAN** (Lebanon) and **Mr. BAKER** (Israel), suggested that article 22 should be considered along with article 8 in the context of Part 2.

23. **The CHAIRMAN** said that the matter would be considered further at the next meeting.

Parts 5, 6 and 8 of the draft Statute (*continued*)

24. **Ms. FERNANDEZ de GURMENDI** (Argentina), Chairman of the Working Group on Procedural Matters, introduced the Group's latest report (A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1), submitting a number of proposed provisions for Parts 5, 6 and 8 of the Statute.

25. **The CHAIRMAN** asked whether he could take it that the Committee of the Whole agreed to refer the text of the articles contained in the report of the Working Group to the Drafting Committee.

26. *It was so decided.*

The meeting rose at 4.05 p.m.